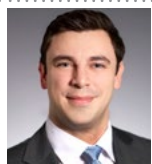




The Condominium Corporation’s Money: Investing in Eligible Securities

By **Evan Holt, B.ES, J.D.**

Many technology companies and financial institutions are making it easier than ever for everyday consumers to trade stocks, options, and cryptocurrencies. There are many stories of unsophisticated investors that have made tremendous



Evan Holt

profits by getting in early on the latest hot stock or cryptocurrency, but for every investor with great timing, there are many that are not so lucky – investors that join in the boom at or near its peak and can only get out at a loss or cling to some faint hope that one day the boom will return.

When individual investors make poor financial decisions only the finances of the individual are affected. The same is not true when a condominium corporation invests its money, as it is investing the collective money of all unit owners.

Before the *Condominium Act, 1998* came into force on May 5, 2001, the *Condominium Act, 1990* contained no restrictions on how a condominium corporation could invest its reserve funds.

Rumoured to have been prompted by a condominium corporation that was contemplating investing reserve funds in a nearby golf course development, the government decided to strictly limit the types of operating and reserve fund investments that can be made by a condominium corporation.

Section 115 of the *Condominium Act, 1998* governs how a condominium corporation can hold and invest its money. A condominium corporation’s money can only be placed in an account in Ontario at a bank listed under Schedule I or II to the *Bank Act* (Canada), a trust corporation, a loan corporation or a credit union authorized by law to receive money on deposit or invested in an “eligible security”.

An “eligible security” includes a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that is issued or guaranteed by the government of Canada or the government of any province of Canada, or is issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation or the Financial Services Regulatory Authority of Ontario.

All or part of a corporation’s money may be invested in an “eligible security” provided the investments are registered in the name of the corporation or held in a segregated account under the name of the corporation by a member of the Canadian Investment Dealers Association and insured by the Canadian Investor Protection Fund.

No other forms of investment are permitted.

In addition to the above limitations:



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- prior to making a reserve fund investment in an “eligible security” the board of directors is required to develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study; and
- any investment of the corporation’s operating funds in an “eligible security” must be convertible to cash within 90 days following a request by the board of directors.

In any event, prior to investing a condominium corporation’s money a board of directors should consult with its usual professional advisors to ensure that the proposed investment complies with section 115 of the *Condominium Act, 1998*.

By strictly regulating the types of investments that a condominium corporation can make, the *Condominium Act, 1998* ensures that the finances of individual owners are not adversely affected by a board of directors that is willing to take investment risks with their collective money and that a condominium corporation can budget

for future expenses based on predictable investment returns.

Directors that cause a condominium corporation to fail to comply with section 115 of the *Condominium Act, 1998* are exposing themselves to personal liability for any losses that may be incurred.

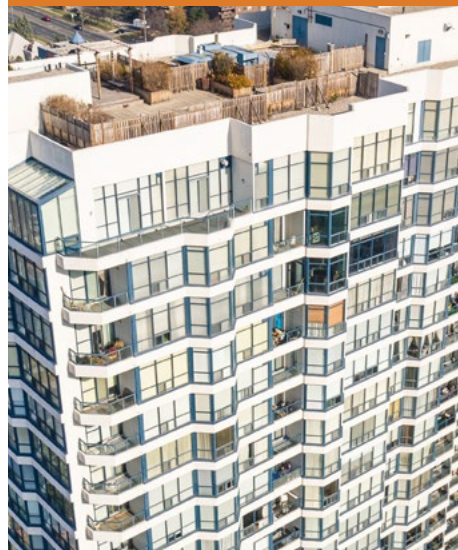
While new investment opportunities continue to become more available to general consumers, a condominium corporation must ensure that any proposed investment of operating or reserve funds complies with section 115 of the *Condominium Act, 1998*. A board of directors should be cautious of any proposed investment that promises returns well above what is typically available in the market or of any person that encourages the board of directors not to speak with their professional investment advisors about concerns related to a proposed investment. ■

Evan Holt is a lawyer with the Condominium Law Group at Shibley Righton LLP. Evan primarily assists condominium corporations with shared facilities and development related disputes. shibleyrighton.com



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